

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26057 of 2021

Arising Out of PS. Case No.-44 Year-2020 Thana- RAJGIR District- Nalanda

Rajendra Yadav @ Rajendra Kumar Son Of Ram Bilash Yadav R/O Village-
Barchhi Bigha, P.S.- Griyak, District- Nalanda.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar
For the Opposite Party/s	:	Mr. Binod Kumar
For the informant	:	Mr. Rama Kant Singh

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

4 20-12-2021 The applicant/accused in Crime No. 44 of 2020 registered with Rajgir Police Station for the offences punishable under sections 147, 148, 149 and 302 of the Indian Penal Code, by this application is seeking his release on bail during pendency of the trial.

Heard the learned counsel for the applicant. By drawing my attention to the FIR as well as the report of the post mortem examination, it is argued that the P.M. report shows that the death of the deceased was due to strangulation whereas the FIR does not show that the deceased was strangled. It is further argued that the applicant is a teacher in government school and is undergoing incarceration for more than 14 months.



Learned counsel for the first informant submits that anticipatory bail application of one of the co-accused is already rejected so also the regular bail of one of the accused.

Learned APP opposes the application.

I have considered the submission so advance and perused the FIR. The FIR is lodged by Sanjay Kumar Deepak, brother of the deceased, Rajeev Kumar. He alleged that these witnesses assaulted of his brother by means of iron rod and butt of the gun by the accused persons including the present applicant.

The report of post mortem examination shows several injuries which may be attributed to the assailants by iron rod so also butt of the rifle.

The opinion expressed by the autopsy surgeon is not only death due to strangulation but also due to haemorrhage and shock because of physical assault.

Be that as it may, all these are the aspects which are required to be considered after examining the witness and while recording its finding by the leaned trial court during the course of judgment. Even otherwise ocular evidence always prevails over the opinion of the expert.

Prima facie, the instant case is that of formation of



unlawful assembly with common object of commission of crime and the accused persons including the applicant are said to have assaulted the deceased Rajeev Kumar.

Though, it is reported that one of the accused is granted anticipatory bail by the coordinate bench of this Court, I am of the considered opinion that perusal of the FIR which is showing eye-witness account of the incident, the principle of parity is not applicable to the case in hand. The principle of vicarious liability in such offences is very clear and crystallized by catena of the judgment of Hon'ble Supreme Court including that of **Masalti vs. State of U.P. AIR, 1965 SCR (8) 133.**

In this view of the matter, no case for grant of bail is made out. It is accordingly, rejected.

(A. M. Badar, J)

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